

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
AT&T Corporation,)	
)	
Complainant,)	
)	
v.)	File No. E-96-36
)	
Frontier Communications of Mt. Pulaski, Inc.,)	
Frontier Communications-Schuyler, Inc.,)	
Frontier Communications-Midland, Inc.,)	
Frontier Telephone of Rochester, Inc., and)	
Global Crossing North America, Inc.,)	
)	
Defendants.)	

MEMORANDUM OPINION AND ORDER

Adopted: February 21, 2002

Released: February 27, 2002

By the Commission:

1. In this Memorandum Opinion and Order (“Order”), we deny a formal complaint that AT&T Corporation (“AT&T”) filed against Frontier Communications of Mt. Pulaski, Inc. (“Frontier-MP”), Frontier Communications of Schuyler, Inc. (“Frontier-Schuyler”), Frontier Communications-Midland, Inc. (“Frontier-Midland”), Frontier Telephone of Rochester, Inc. (“Frontier Telephone”), and Global Crossing North America, Inc. (“Global Crossing”) (collectively, “Defendants”) pursuant to section 208 of the Communications Act of 1934, as amended (“Act” or “Communications Act”).¹ AT&T alleges that access revenue-sharing arrangements between Defendants and certain information providers to which Defendants terminated traffic constituted unreasonable discrimination, in violation of section 202(a) of the Act,² and breached Defendants’ common carrier duties, in violation of section 201(b) of the Act.³

¹ 47 U.S.C. § 208. *AT&T Corp. v. Frontier Communications of Mt. Pulaski, Inc. et al.*, Verified Complaint, File No. E-96-36 (filed July 15, 1996) (“Complaint”).

² 47 U.S.C. § 202(a). Section 202(a) of the Act makes it unlawful “for any common carrier to make any unjust or unreasonable discrimination in charges, practices, . . . facilities, or services for or in connection with like communication service . . . or to make or give any undue or unreasonable preference or advantage to any particular person.” 47 U.S.C. § 202(a).

The issues raised in this Complaint are identical to those raised and denied in *AT&T Corp. v. Jefferson Telephone Co.*⁴ Thus, for the reasons explained therein, we conclude that AT&T has failed to meet its burden of demonstrating that Defendants violated either section 202(a) or section 201(b) of the Act,⁵ and therefore deny AT&T's complaint in its entirety. Moreover, we decline to reach three issues that AT&T raised for the first time in its briefs, because the tardy raising of these issues renders the record insufficient to permit a reasoned decision.⁶

2. ACCORDINGLY, IT IS ORDERED, pursuant to sections 1, 4(i), 4(j), 201(b), 202(a), and 208 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201(b), 202(a), and 208, that the above-captioned complaint filed by AT&T IS DENIED IN ITS ENTIRETY, and this proceeding is TERMINATED WITH PREJUDICE.

3. IT IS FURTHER ORDERED, pursuant to sections 1, 4(i), 4(j), 201(b), 202(a), and 208 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201(b), 202(a), and 208, that Frontier's Motion to Dismiss, and Frontier's Motion to Dismiss Supplement to Verified Complaint are DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

³ 47 U.S.C. § 201(b). Section 201(b) of the Act provides, in pertinent part, that "[a]ll . . . practices . . . in connection with such communication service shall be just and reasonable, and any such . . . practice . . . that is unjust or unreasonable is hereby declared to be unlawful." 47 U.S.C. § 201(b).

⁴ *AT&T Corp. v. Jefferson Telephone Co.*, Memorandum Opinion and Order, 16 FCC Rcd 16130 (2001) ("*AT&T v. Jefferson*").

⁵ See generally *Hi-Tech Furnace Systems, Inc. v. FCC*, 224 F.3d 781, 787 (D.C. Cir. 2000) (affirming that the complainant in a proceeding conducted under section 208 of the Act bears the burden of proof).

⁶ See, e.g., *AT&T v. Jefferson*, 16 FCC Rcd at 16133 n.18; *Consumer.Net v. AT&T Corp.*, Order, 15 FCC Rcd 281, 300, ¶ 40 n.93 (1999) (declining to consider an argument raised for the first time in the briefs). Cf., *Building Owners and Managers Association International v. FCC*, 254 F.3d 89, 100 n.14 (D.C. Cir. 2001) (declining to address an issue raised cursorily in the brief).